**What are your estate planning options?**

One of the main purposes of the Act is to preserve the trust status and reduce the number of small, fractionated interests in Indian lands. The following chart is a brief overview of your estate planning options.

### Estate Planning Options for Beneficiaries under AIPRA

**Without a Will**

<table>
<thead>
<tr>
<th>Trust interest 5% or more - trust property goes to the eligible descendants and surviving spouse in order:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surviving spouse in a life estate, then to children equally or to grandchildren, great grandchildren</td>
</tr>
<tr>
<td>If none, then to parents.</td>
</tr>
<tr>
<td>If none, then to siblings</td>
</tr>
<tr>
<td>If none of the above, land goes to Tribe</td>
</tr>
</tbody>
</table>

**If Surviving Spouse, spouse receives life estate and**

| Gets 1/3 of IIM account at date of death |
| Gets all income produced by the trust interest during spouse's lifetime |
| Other eligible heirs will get the remaining 2/3 of the IIM account at date of death |

**Trust interest less than 5% - goes to Descendants and surviving spouse in this order:**

**Single heir rule - goes to one person as follows:**

| Oldest surviving, eligible child |
| Oldest surviving, eligible grandchild |
| Oldest surviving, eligible great-grandchild or |
| If none of the above, land goes to the Tribe |

**If surviving spouse is living on that parcel at the time of death**, the spouse gets life estate in that parcel only (including the home) with remainder to oldest single heir above

**With A Will**

- With a will the trust land owner can decide who gets the land and IIM monies
- If trust interest is passed to another Indian or eligible non-Indians (see below), the land stays in trust
- If non-IRA trust interest is left to a non-Indian, the land passes from trust to fee status. The tribe will also have the right to purchase before fee transfer is complete in probate.
- IRA lands may not be given in a will in fee to anyone, the transfer will fail. IRA lands must remain in Trust or Restricted status under AIPRA and IRA (25 USC § 2206(b)(2)(B) and 25 USC § 464)

**Stopping Purchases at Probate**

Heirs must give their consent to sell if one of the following applies:

- Interest to be received by heir is 5% or greater
- There is a valid Will
- Heir to receive interest lives on that parcel at time of death
- Heirs agree to voluntary consolidation agreement during the probate proceeding

**Who is eligible to inherit land in trust?**

*Any one of the following:*

- Member of an Indian Tribe
- Eligible to become a member of a Tribe
- Person who owns an interest in trust land on October 27, 2004
- Person who meets the definition of Indian under the Indian Reorganization Act
- In California, any person who owns an interest in trust or restricted land in California
- Decedent's lineal descendants within 2 degrees of relationship to any Indian (without a Will)
- Any children, grandchildren or great grandchildren (lineal descendants of testator) who are given an interest in a Will, even if non-Indian
- A co-owner in same parcel

Institute for Indian Estate Planning and Probate 2006

www.indianwills.org